



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on November 11, 2015, by telephone. With the petitioner's consent the hearing record was held open for 10 days for her additional submission, which was received.

The issue for determination is whether the Division correctly denied a prior authorization request for a surgery, circumferential panniculectomy.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By written submission of [REDACTED], M.C.
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County. She is certified for MA or BadgerCare Plus.

- [REDACTED]
2. On July 30, 2015, a prior authorization request was submitted on the petitioner's behalf for a circumferential panniculectomy procedure. The Division issued written notice of denial on August 13, 2015.
 3. The Division's basis for denial was its determination that the procedure was not medically necessary, based on the Division's policy criteria. Specifically, the Division was not convinced that the petitioner (1) has documented that her panniculus causes chronic intertrigo that recurs after three months of medical therapy, and (2) has not documented that the panniculus hangs below the level of the pubis.
 4. The petitioner, age 27, underwent bariatric surgery in January 2013. She lost 150 pounds. Her weight is currently stable, ranging from 133 to 140 pounds. Her overall health is good.
 5. Intertrigo is a rash that appears between the folds of skin. The petitioner's panniculus causes chronic intertrigo that consistently recurs over three months while receiving appropriate medical therapy. In pertinent part, her primary physician wrote:

I have been her primary care physician since January of 2013. She has been experiencing recurrent yeast dermatitis infections under overhanging skin and vaginally. Since 2010 she has been prescribed fluconazole which is the prescription for yeast infections 9 times. She has also reported using over the counter creams almost continuously since I have met her. We have started a prescription in July of topical clotrimazole but it is easily accessible over the counter and that has been what she has typically used. She has used it preferentially almost continuously because her insurance does not cover it.
 6. The petitioners' panniculus does not hang below the level of the pubis. The panniculus does not create a significant functional deficit that profoundly impairs the ability to perform activities of daily living.

DISCUSSION

The MA program pays for a variety of medical services listed in federal and state law, but does not pay for all types of medical services. *See*, Wis. Stat. § 49.46(2); Wis. Admin. Code § DHS 107.01, *et seq.* With respect to excision of excess skin, the Wisconsin MA program requires that the providing surgeon request prior authorization, which was done here. *See*, Wis. Admin. Code § DHS 107.02(3). One of the prior authorization criteria is that the procedure must be "medically necessary" to treat the patient's condition. *Id.*, (e)(1). The burden of proving that a procedure is medically necessary rests with the petitioner.

In general, the MA program declines to pay for panniculectomy because it views the procedure as being for cosmetic improvement, rather than medical need. However, there are limited circumstances under which removal of the excess skin is deemed to be medically necessary. Currently, the Wisconsin MA policy criteria for authorization for this procedure is, in pertinent part:

Panniculectomy surgery is considered medically necessary if the panniculus hangs below the level of the pubis and either one of the following criteria is met:

- The medical record documents that the panniculus causes chronic intertrigo that is refractory to at least three months of appropriate medical therapy or consistently recurs over three months while receiving appropriate medical therapy.
- ... present of a significant functional deficit that prohibits ... the ability to perform activities of daily living.... [n/a]

ForwardHealth Update, No. 2014-01 (January 2014).

The petitioner has met her burden of showing that she has chronic intertrigo that consistently recurs over three months while receiving appropriate medical therapy. However, per submitted photographs, she has not met the policy requirement that her panniculus hang below the level of the pubis. If the policy is followed, her authorization request must be denied.

To a medical layperson, such as this judge, this policy appears at first blush to be unreasonable. The petitioner has documented her recurrent problems with sores between her skin folds, and the poor response to more conservative treatment measures for the sores. To me it seems that such a problem makes the requested treatment a medical necessity, without more. If my memory serves correctly, at some point in the past, Wisconsin MA policy did not include the requirement of the panniculus hanging below pubis level. However, the Department's position letter for this hearing was signed by a physician, which indicates that this physician agrees that the "below pubis level" criterion must be met for there to be medical necessity. This judge has also looked at various reputable online medical sites (National Institutes of Health, WebMD, Mayo Clinic) and found nothing on point as to when this procedure is a medical necessity. However, Medicare and some private insurers (e.g., Blue Cross of Kansas) have a requirement that the pannus below pubis level before medical necessity is deemed present. Presumably those requirements were developed with physician input. See, policy for CPT code 15830 at <http://www.medicarepaymentandreimbursement.com/2011/05/cosmetic-and-reconstructive-surgery-cpt.html> (panniculectomy). Finally, this judge was unable to find any further guidance in a portion of the federal code regarding MA services. See, 42 C.F.R. §§ 435 – 447.

The petitioner has the burden of supplying credible evidence from a medical source to show that the Wisconsin MA policy on medical necessity for this procedure is unreasonable. Such evidence could take the form of an article from a reputable medical journal, or a letter from a physician specialist explaining why the Wisconsin MA policy does not align with what is viewed as being a "medical necessity" in the relevant medical specialty. But, as I have neither, and my own efforts to locate a contrary document that is "judicial notice-worthy" have been fruitless, I will conclude that the Division's policy is reasonable and properly applied here.

CONCLUSIONS OF LAW

1. The Division's policy requirements for medical necessity for panniculectomy approval are reasonable.
2. The petitioner's condition does not satisfy the Division's medical necessity requirements for panniculectomy approval; hence, denial of her prior authorization request was correct.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

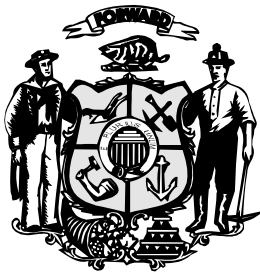
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of December, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 22, 2015.

Division of Health Care Access and Accountability